

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: N.C. COASTAL RESOURCES COMMISSION

RULE CITATION: 15A NCAC 07M .0402

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

It is unclear who or what this rule applies to. It is unclear what type of projects or facilities the need for the impact assessment detailed in this rule applies to.

Paragraph (a) refers to "a proposed project" in the first sentence, an "energy facility" in (a)(8), "the facility" in (a)(10), "energy exploration or development activities in the last paragraph of (a) page 2 at line 17, and "major energy facilities" in (b). In addition the rules before and after this rule seem to apply unevenly to all "energy facilities" and only "major energy facilities."

The rule should be rewritten to more clearly specify the "projects" or "proposed projects" this rule applies to, especially whether it applies only to projects that will become a major energy facility, as well as defining an "energy facility" to determine the difference between it and a "major energy facility" so that it is clear what the other rules refer to.